

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SAUL IRIGOYEN)	
Claimant)	
VS.)	
)	Docket No. 1,007,684
MORENO'S FRAMING COMPANY and)	
PROHASKA CONSTRUCTION COMPANY, INC.)	
Respondents)	
AND)	
)	
AMERICAN FAMILY MUTUAL INSURANCE)	
COMPANY and KANSAS BUILDING INDUSTRY)	
WORKERS COMPENSATION FUND (KBIWCF))	
Insurance Carriers)	

ORDER

Respondent Moreno's Framing Company and its insurance carrier American Family Mutual Insurance Company appeal the January 5, 2004 preliminary hearing Order of Administrative Law Judge Steven J. Howard.

ISSUES

Respondent raises the following issues for Board consideration:

- (1) That the court declined discontinuing temporary total benefits to claimant in light of an unauthorized surgical procedure that was performed outside of this country.
- (2) That the court held that claimant is entitled to additional medical treatment for a spinal condition created by the unauthorized surgical procedure performed outside of this country.¹

¹ Appeal to the Board of Workers Compensation Appeals, filed January 16, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent contends the Administrative Law Judge erred in refusing to discontinue benefits for temporary total disability compensation and medical treatment in the above matter. Respondent argues that claimant's unauthorized surgical procedure performed outside this country entitles it to terminate all benefits. The Board, however, before determining that issue, must decide whether it has jurisdiction to consider this matter on appeal from a preliminary hearing. K.S.A. 44-534a grants the Administrative Law Judge the authority to award or deny temporary total disability compensation and medical treatment in a preliminary hearing order pending a full hearing on the claim. The Board is denied review of pending preliminary hearing orders entered by administrative law judges unless it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the requested relief.²

K.S.A. 44-534a sets out the following disputed issues which shall be considered as jurisdictional and subject to review by the Board on appeal from preliminary hearings:

- (1) Whether the employee suffered accidental injury.
- (2) Whether the injury arose out of and in the course of the employee's employment.
- (3) Whether notice is given or claim timely made.
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board on appeal from preliminary hearings. Claimant's entitlement to temporary total disability compensation and his entitlement to ongoing medical care are not issues over which the Board takes jurisdiction on appeal from preliminary hearings.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

² K.S.A. 2002 Supp. 44-551(b)(2).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); see also *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

In order to determine whether there is jurisdiction to review any of the issues raised by respondent in its appeal, the Board must interpret the issues raised by respondent. If respondent is arguing that the medical treatment provided to claimant was not reasonable and necessary, that would not be an issue over which the Board would take jurisdiction from a preliminary hearing. An administrative law judge has the authority to determine a claimant's entitlement to medical benefits at preliminary hearing.⁴

If, however, the dispute centers around whether claimant's present disability and need for medical treatment are related or directly attributable to claimant's work-related accident, it would involve whether claimant suffered accidental injury arising out of and in the course of his employment or whether claimant suffered an intervening accident resulting in the surgeries.

The only evidence on that issue is from claimant. Claimant testified that while traveling to Mexico, his back began bothering him and upon arriving in Mexico, he sought additional medical treatment in order to resolve the ongoing pain symptoms. The record contains no medical evidence from the treating physicians in Mexico. There is only claimant's testimony as to what, if any, complaints he had upon his arrival in Mexico and the cause of those complaints. Should this evidence be provided at a later time, then additional consideration can be given to the reason for claimant's need for treatment. However, the current record is void of evidence contradicting claimant's testimony. The Board, therefore, cannot find that respondent has proven that claimant's present disability and need for medical treatment are related or directly attributable to something other than the work-related accident of November 13, 2002. Respondent has failed to prove an intervening accident in Mexico which would terminate respondent's responsibility for providing ongoing medical care in this instance.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated January 5, 2004, should be, and is hereby, affirmed and remains in full force and effect.

IT IS SO ORDERED.

⁴ K.S.A. 44-534a.

Dated this ____ day of April 2004.

BOARD MEMBER

- c: David J. Grummon, Attorney for Claimant
Joseph R. Ebbert, Attorney for Respondent (American Family)
Matthew S. Crowley, Attorney for Respondent (KBIWCF)
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director